

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SONOMA

RODOLFO Di MASSA, MD, and KARL NO. 222363
NIGG, individually and on behalf of
STENTICOR INTERNATIONAL, INC.,
Plaintiffs,

vs.

SIMON STERTZER, MD, MICHAEL BONEAU,
and MEDTRONIC ARTERIAL VASCULAR
ENGINEERING, INC., a Delaware
Corporation, DOES 1-25, and
ROES 26-50,

Defendants;

and

STENTICOR INTERNATIONAL, INC.,
a California Corporation,
Nominal Defendant.

DEPOSITION OF PAUL BONEAU

Tuesday, January 9, 2001

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REPORTED BY DONNA J. WILLIAMS, CSR NO. 11133

PAUL BONEAU

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A P P E A R A N C E S (CONTINUED)

FOR THE DEFENDANTS:

LAW OFFICES OF ROBINS, KAPLAN, MILLER &
CIRESTI, LLP
BY: JAN M. CONLIN, ESQUIRE
SARA ANSPACH POULOS, ESQUIRE
2800 Lasalle Plaza
800 Lasalle Avenue
Minneapolis, Minnesota 55402-2015
612-349-8500

ALSO PRESENT:

DON SPARK, Videographer
Dan Mottaz Video Productions

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

LAW OFFICES OF CARLE, MACKIE, POWER & ROSS,
LLP
BY: DAWN M. ROSS, ESQUIRE
100 B Street, Suite 400
Santa Rosa, California 95401
707-526-4200

LAW OFFICES OF HELLER, EHRMAN, WHITE &
McAULIFFE, LLP
BY: ALEXANDER L. BRAINERD, ESQUIRE
525 University Avenue
Palo Alto, California 94301-1900
650-324-7000

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E X H I B I T S

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643	Document entitled "Declaration of Paul Boneau, Jr."	48
644	Letter dated 5/2/86 from Paul Boneau to Carl Nigg	57
645	Letter dated 5/11/86 from Rodolfo Di Massa, MD to Paul Boneau	57
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Appln. No. 09/287,216
Exhibit 7 to
Information from Related Litigation

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- 1 Q. Was the content of paragraph five true and
2 accurate at the time you signed the declaration?
3 A. There's a little -- when it says went out of
4 business in '86, I'm not 100 percent sure about that, if it
5 actually went out of business or not. I really don't --
6 I'm just not sure.
7 Q. Okay.
8 A. So that'd be the only difference.
9 Q. Okay. It stopped doing business in
10 approximately 1986. Is that correct?
11 A. Yes.
12 Q. Okay. With the change that it stopped doing
13 business in approximately 1986, is everything else about
14 paragraph five true and correct?
15 A. Yes.
16 Q. And why don't you go on to paragraph six.
17 A. Okay.
18 Q. Was the content of paragraph six true and
19 correct at the time you signed the declaration?
20 A. Yes.
21 Q. And are there any changes that need to be
22 made to that?
23 A. No.
24 Q. Let's move on to paragraph seven.
25 A. Okay. Seven, the date, I'm just guessing on
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- 1 that date. I think it's more like an '86, but I can't --
2 I'm not sure. So it's a guess.
3 Q. So your best estimate is that the date in
4 paragraph seven should read late 1986. Is that correct?
5 A. Late middle or late '86, I think. Yes,
6 that's my best guess.
7 Q. Let's -- let's do this. Is it fair to say
8 that at a Stentcor shareholder meeting in 1985, slash,
9 1986 --
10 A. That would work.
11 Q. Is that -- is that a fair --
12 MS. CONLIN: Objection; mis-characterizes the
13 witness's testimony.
14 BY MS. ROSS:
15 Q. Is that a fair characterization of what
16 happened?
17 A. Yes.
18 Q. Okay. So your best estimate is that at a
19 Stentcor shareholder meeting in 1985, slash, 1986 you
20 recall Dr. Di Massa discussing the need to come up with a
21 different idea for the stent, that Dr. Di Massa told you
22 that the Di Massa sleeve which had a rigid -- solid, rigid
23 wall was difficult to introduce because it would not bend
24 and also because it had to be introduced surgically rather
25 than with a catheter. Is that correct?
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- 1 A. The only part is the introduced it
2 surgically. We were actually putting stents in with
3 catheters, even the hard ones. It wasn't all -- I don't
4 know if that -- that paragraph doesn't seem right.
5 Q. Okay. Let's make it right, as right as --
6 A. Maybe difficult to introduce with the
7 catheter. Not -- 'cause it didn't have to be introduced
8 surgically. So maybe difficulty with the catheter.
9 Q. Okay. So I want to -- I want to make sure
10 that this paragraph is as correct as it can be. So is it
11 then fair to say that: At the first Stentcor shareholder
12 meeting in 1985, slash, '86 I recall Dr. Di Massa
13 discussing the need to come up with a different idea for
14 the stent. Dr. Di Massa told us that the Di Massa sleeve
15 which had a solid rigid wall was difficult to introduce
16 because it would not bend, period?
17 A. Yeah.
18 Q. Okay. And that paragraph as corrected is
19 true and correct as you sit here today. Is that true?
20 A. Yes.
21 Q. Let's move on to paragraph eight.
22 A. This one has to be changed a little bit.
23 Q. Well, let me back up for a moment.
24 Was paragraph eight true and correct at the
25 time you signed this declaration?
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- 1 A. Paragraph eight?
2 Q. We're on paragraph eight.
3 A. Yeah.
4 Q. Was paragraph eight true and correct at the
5 time you signed the declaration?
6 A. Yeah, from the first time I looked at it, it
7 looked pretty right.
8 Q. And what change would you like to make as you
9 sit here today?
10 A. The ring, where it says suggested that we
11 take a ring.
12 Q. Okay.
13 A. I suggested a straight wire.
14 Q. Okay. Right now it says that we take a ring
15 or a straight wire.
16 A. Right. It was a wire.
17 Q. Okay. So it should read a straight wire.
18 Anything else that needs to be changed about
19 paragraph eight?
20 A. No, that's it.
21 Q. So deleting the words "a ring or" makes
22 paragraph eight true and correct as you sit here today. Is
23 that true?
24 A. Yes.
25 Q. Let's move on to paragraph nine.
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1 come up with ideas. What was discussed at that time was
2 taking like a ten thousandths wire, bending it, and welding
3 it together to make one piece. But we weren't sure at that
4 time how to go ahead and bend it into the proper
5 configuration to make it work. But this happened at my
6 brother's house. These are the rings that I made.
7 Q. So at the meeting in late 1986 or very early
8 1987 when you and your brother and Jack Warner were
9 discussing bending a wire into some sort of configuration,
10 what sort of configurations were discussed?
11 A. Just we didn't have anything. We just knew
12 that we needed to bend something, but we did not have a
13 configuration at that time. We didn't know exactly what
14 would work, and it was pretty much dismissed early because
15 it -- they said it would be too weak, and once you bent it,
16 it would say bent and it wouldn't open back up. So it was
17 dismissed.
18 Q. So who dismissed the idea?
19 A. My brother and Jack. They said it's not
20 going to work, so we just went on, tried to think of
21 different things. And that's when we came up with a, like
22 a spring steel-type thing. But that was dismissed too
23 because it would be too difficult to keep it into a
24 configuration where you could introduce it into the heart.
25 Q. So your brother and Jack dismissed the idea
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1 of bending a wire into a stent for two reasons, as I
2 understand your testimony. One, because it would be too
3 weak and, two, because it would be hard to expand it and
4 contract it. Is that correct?
5 A. Too weak. I don't think it'd be hard to
6 expand and contract. It'd be too weak.
7 Q. Okay. So your brother and Jack Warner
8 discarded the idea of bending a wire into some sort of
9 configuration on the basis that it would be too weak. Is
10 that correct?
11 A. Yes, yes.
12 Q. And after discarding that idea then you and
13 your brother and Jack Warner in the same meeting in late
14 1986, early 1987 went on to discuss a stent in some type of
15 a wire --
16 A. Like a spring steel-type wire. But, again,
17 that was dismissed real quick too 'cause we couldn't figure
18 out how we could even get that to work. It would stay
19 open, but we couldn't get it to close.
20 Q. And while discussing the spring shape idea,
21 did anyone suggest possibly using a memory metal that could
22 be expanded with heat?
23 A. Not that I recall, no.
24 Q. While you and Jack Warner and your brother
25 were having this discussion in late 1986 or early 1987,
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1 were any of you actually taking wire and trying to --
2 A. No.
3 Q. -- play with it and come up with ideas?
4 A. No.
5 Q. So you were just talking about it, not
6 physically doing anything?
7 A. Yes.
8 Q. And what other ideas did you and your brother
9 Michael and Jack Warner discuss at this meeting in late
10 1986, early 1987 other than bending a wire into a
11 configuration or using a --
12 A. Spring steel.
13 Q. -- spring steel, spring design?
14 A. That was it.
15 Q. During the meeting that you had with myself
16 and Mr. Brainerd here, do you recall telling us that at
17 this meeting in late 1986, early 1987 that you and your
18 brother actually discussed forming a wire into the design
19 that's encompassed within Exhibit 647? Do you recall that?
20 A. No.
21 Q. Let's look back at paragraph eight. In the
22 third sentence of paragraph eight you state, "I suggested
23 to Michael that we take" -- and we've corrected this
24 according to your deposition testimony, "that we take a
25 straight wire with a width of 10/1000 and bend it into
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1 peaks and troughs so that it can be compressed and
2 expanded."
3 Is that part of the conversation that you had
4 with your brother in late 1986, early 1987?
5 A. Only to bend it. To bend it. But not -- we
6 didn't really know the exact configuration at that time
7 what to bend it into.
8 Q. And did you talk about bending it into peaks
9 and troughs as stated in your declaration?
10 A. No.
11 Q. Okay. Mr. Boneau, before signing this
12 declaration you had several opportunities to review it and
13 correct it. Is that true?
14 A. Yes.
15 Q. And then just within the last hour or so of
16 this deposition we again went through and made any
17 corrections that needed to be made. Is that right?
18 A. Yes.
19 Q. And at that time did you make any change to
20 the portion of your declaration that said that you and your
21 brother discussed bending the stents -- I'm sorry, bending
22 a straight wire into peaks and troughs?
23 A. I actually read it, but didn't even -- it
24 just went through. We -- like I said, we discussed bending
25 it, but we didn't discuss actually bending it into a
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1 certain configuration. So that is wrong. It was my fault.
 2 Q. So after having had many opportunities to
 3 review this declaration and make it accurate, you're now
 4 saying that you and your brother did not discuss the
 5 sinusoidal sign and did not discuss bending it into peaks
 6 and troughs?
 7 A. No, we discussed bending it, but we didn't
 8 know exactly which configuration to bend it into, yes.
 9 Q. Okay. When did you and your brother first
 10 discuss bending the wire into -- either a wire or a ring
 11 into peaks and troughs?
 12 A. This would have been late 1988.
 13 Q. Okay. Let's back up a minute.
 14 Between this conversation that you and your
 15 brother had in late 1986 or very early 1987 and the next
 16 conversation that we'll be talking about where you helped
 17 him make stents in 1988, did you and he have any other
 18 discussions regarding possible variations of an expandable
 19 stent?
 20 A. No.
 21 Q. So after this discussion with you and your
 22 brother Michael and Jack Warner in late 1986, 1987, the
 23 topic did not come up again until late 1988. Is that
 24 correct --
 25 A. Yes, yes.
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1 Q. And why was that? Why did the topic not come
 2 up again?
 3 A. Because it seemed like everybody was just --
 4 like nobody wanted to go into it any further. It was like
 5 we just stopped doing it. The ideas weren't coming.
 6 Q. At the time that you and your brother and
 7 Jack Warner had the discussion in late 1986, early 1987
 8 regarding taking a wire and configuring it, bending it to
 9 configure it in some manner, were you still producing
 10 Di Massa sleeves at that point in time?
 11 A. Yes, I'd say yes, we were.
 12 Q. So then tell me about the next time that you
 13 recall discussing stents with your -- or expandable stents
 14 with your brother Michael?
 15 A. It was in late '88 after the company closed,
 16 my brother asked me if I would make some rings for him and
 17 that when we made them I'd go to his house and we'd bend
 18 them into a configuration that you see there, that Jack
 19 Warner made the fixture and designed the fixture so that
 20 that would work.
 21 Q. Okay. So in late 1988?
 22 A. Yes.
 23 Q. And you said after the company closed. You
 24 were referring to Pegasus. Is that correct?
 25 A. Referring to Pegasus, yes.
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1 Q. Okay. So sometime after October 1988, so
 2 either in November or December of 1988 you received a
 3 telephone call from your brother. Is that what happened?
 4 A. Yeah. I mean, I don't know how it happened.
 5 I don't know if I was talking to him one day or he called
 6 me. I don't know.
 7 Q. Okay. What did he ask you?
 8 A. If I would make rings for him and that after
 9 I made the rings, we'd go to his house and we'd bend them
 10 into a configuration right there that Jack Warner designed
 11 the fixture for.
 12 Q. And did you know what the configuration was
 13 going to be before you got to his house or did he just ask
 14 you to make the rings and then you found out about it
 15 when --
 16 A. He asked me to make the rings.
 17 Q. Okay. And the rings that your brother
 18 Michael asked you to make in late 1988 are the same as or
 19 similar to the rings that are part of --
 20 A. Yes, yes.
 21 Q. -- Exhibit 647. Is that correct?
 22 A. Yes.
 23 Q. Are they of the same dimension?
 24 A. I -- the thickness, yes. But the diameter,
 25 maybe not. I'm not sure of the exact diameter at that
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1 time. The thickness, yes.
 2 Q. And what material did you use to make the
 3 rings?
 4 A. This ring or --
 5 Q. The rings that your brother asked you to make
 6 in late 1988.
 7 A. They were made out of the special medical
 8 grade stainless.
 9 Q. And where did you obtain that?
 10 A. He gave me material.
 11 Q. And was it the same medical grade stainless
 12 that you had used to make the Di Massa sleeves?
 13 A. Yes.
 14 Q. How do you know that?
 15 A. Because he told me. He said it's the same
 16 bars that we used with the sleeve.
 17 Q. And could you also tell from looking at the
 18 material that it was the same as you had used for the
 19 Di Massa sleeve?
 20 A. You can't really look at the material and say
 21 yes, no. You can't. You'd have to get independent labs
 22 that would have to be checked out. You couldn't look at it
 23 and say yes, it is or, no, it isn't.
 24 Q. But your brother Michael told you that the
 25 material he was having you make the expandable stents out
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